

Message Text

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ACTION COME-00

INFO OCT-01 EA-06 ISO-00 EB-07 L-02 TRSE-00 CIEP-01 OMB-01

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FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC 5018

C O N F I D E N T I A L TAIPEI 2346

EO 11652 GDS

TAGS EIND TW

SUBJECT: REPUBLIC OF CHINA GENERAL CENSUS ON TRADE-
MARKS

REF: STATE 093168

1. SUMMARY: WHEN ADVISED OF U.S. GOVERNMENT CONCERN
RE ASPECTS OF ROC GENERAL CENSUS ON TRADEMARKS, DIRECTOR
OF ROC NATIONAL STANDARDS BUREAU AGREED TO REVISE SOME
PARTS OF THE QUESTIONNAIRE, AND TO MAKE THE PROVISION
OF INFORMATION REQUESTED BY CERTAIN QUESTIONS VOLUNTARY.
DIRECTOR PROVIDED RATIONALE FOR CENSUS AND CLARIFIED
NUMBER OF POINTS ON THE QUESTIONNAIRE. EMBASSY PROPOSES
TO CONFIRM THSE UNDERSTANDINGS IN EXCHANGE OF LETTERS.
END SUMMARY.

2. APRIL 29 EMBOFFS CALLED ON DR. WERNER Y.F. NING,
CIRECTOR, ROC NATIONAL BUREA OF STANDARDS (MBS)
TO INFORM HIM OF U.S. GOVERNMENT CONCERN ABOUT TRADEMARK
CENSUS AND TO SEEK CLARIFICATION OF CERTAIN POINTS
IN THE QUESTIONNAIRE. ECONCOUNS PROVIDED NING WITH
MEMORANDUM WHICH DREW ON REFTEL. NING CONFIRMED WHAT
WE HAD HEARD FROM OTHERS, THAT HE CONCEIVED IDEA FOR
CENSUS AND IS MOTIVE FORCE BEHIND ITS IMPLEMENTATION.
NONETHELESS, HE SEEMED QUITE FLEXIBLE AND WILLING TO
ACCOMMODATE US WHENEVER POSSIBLE.

3. NING STRESSED THAT CENSUS IS DESIGNED TO ASSIST THE
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ROC IN IMPROVING ITS TRADEMARK PRACTICE; TO PROTECT

THE EXCLUSIVE RIGHT OF REGISTERED TRADEMARK OWNERS AND THE INTERESTS OF CONSUMERS. NBS PLANS TO COMPUTERIZE TRADEMARK INFORMATION AND WANTS ACCURATE, COMPLETE AND UP-TO-DATE DATA BASE. NING SAID HE REALIZED THAT THE CENSUS HAS CAUSED A GOOD DEAL OF APPREHENSION AS TO ITS REAL PURPOSE, AND WISHED TO ASSURE US THERE ARE NO HIDDEN MEANINGS OR DEVIOUS INTENTIONS. NING ATTRIBUTED PART OF THE CONCERN BY FOREIGN FIRMS TO INACCURATE TRANSLATIONS INTO ENGLISH OF THE ORIGINAL CHINESE LANGUAGE QUESTIONNAIRE. NBS HAS NOT PROVIDED AN ENGLISH-LANGUAGE VERSION OF THE DOCUMENT AND SEVERAL OF THE LOCAL TRANSLATIONS NING HAD SEEN CONTAINED ERRORS. ECONCOUNS POINTED OUT THAT EMBASSY IS USING VERSION BY LOCAL LAW FIRM LEE AND LI, AND NING SAID THIS IS AN ACCURATE ENGLISH TRANSLATION. (COPY OF LEE AND LI VERSION IS BEING POUCHED APRIL 30 TO EA/ROC. EXECUTIVE YUAN LETTER REQUESTED REFTEL WILL BE POUCHED AS SOON AS OBTAINED.)

4. RE PARA 6 REFTEL, NING POINTED OUT THAT EVEN THOUGH THERE IS TO BE A GENERAL CENSUS, IN EFFECT TRADEMARK REGISTRATIONS WILL BE SUBJECT TO REVIEW FOR VALIDITY ONLY ON A "CASE-BY-CASE BASIS." IF NBS PANEL REVIEWING QUESTIONNAIRE DECIDES THERE IS PRIMA FACIE CASE FOR GOVERNMENT TO CHALLENGE THE VALIDITY OF A TRADEMARK REGISTRATION, RESPONDENT WILL BE NOTIFIED AS TO THE NATURE OF THE CHALLENGE AND GIVEN FULL OPPORTUNITY TO REPLY. IF, AT THAT POINT, NBS STILL DECIDES TO PROCEED WITH ITS CHALLENGE, THE REGISTRANT WOULD BE ENTITLED TO THE SAME PROTECTION OF THE LAW, BOTH PROCEDURAL AND SUBSTANTIVE, AS HE WOULD BE IF THE GOVERNMENT WERE PROCEEDING ON A CASE-BY-CASE BASIS. FOR EXAMPLE, IF THE REGISTRANT'S TRADEMARK WAS REVOKED, HE COULD APPEAL TO THE MINISTER OF ECONOMIC AFFAIRS, TO THE EXECUTIVE YUAN, AND FINALLY, TO THE ADMINISTRATIVE COURT OF THE JUDICIAL YUAN.

5. RE PARA 7, REFTEL, PART III, QUESTIONS 10-11 OF QUESTIONNAIRE: ON LEE AND LI FORM, THESE TWO QUESTIONS REQUEST NAME AND ADDRESS OF RESPONDENT'S LOCAL CONFIDENTIAL

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REPRESENTATIVE AND A RESPONSE IS NOT REQUIRED IF NOT APPLICABLE (SEE FOLLOWING PARAGRAPH).

6. PART IV, QUESTIONS 12-13: SIMILARLY, IF THE AMERICAN FIRM IS REPRESENTED BY A LOCAL ATTORNEY HIS NAME AND ADDRESS SHOULD BE SUPPLIED. IF THERE IS NO LOCAL REPRESENTATIVE OR ATTORNEY, THESE SPACES MAY BE LEFT BLANK. (NOTE: ARTICLE 8 OF THE ROC TRADEMARK

LAW REQUIRES THAT A TRADEMARK OWNER WHO IS NOT DOMICILED OR HAS NO BUSINESS OFFICE WITHIN THE TERRITORY OF THE ROC MUST DESIGNATE BY WRITTEN DOCUMENT FILED IN NBS THE NAME AND ADDRESS OF SOME PERSON WHO IS DOMICILED OR HAS A BUSINESS OFFICE IN THE ROC ON WHOM MAY BE SERVED NOTICES AFFECTING THE TRADEMARK AND TO WHOM ALL OFFICIAL COMMUNICATIONS WILL BE ADDRESSED.)

7. PART V, QUESTION 16: RESPONDENTS WHO REPORT NON-USE OF A TRADEMARK REGISTRATION MAY ATTACHE A SEPARATE SHEET INDICATING "GOOD CAUSE" FOR BEING UNABLE TO USE IT.

(IN SUCH CASES, NING SUGGESTS RESPONDENTS TYPE OR PEN IN THE PHRASE "SEE ATTACHED SHEET" UNDER QUESTION 16.)

8. PART V QUESTION 19: NING SAID THE CONFEDERATION OF BRITISH INDUSTRIES ALSO HAD OBJECTED TO PROVIDING INFO ON FOREIGN REGISTRATIONS. IF RESPONDENT CONSIDERED THIS INFO COMMERCIALY SENSITIVE, REPLY COULD SO INDICATE AND NBS WOULD WAIVE REQUIREMENT. NING HOPED MOST COMPANIES WOULD PROVIDE INFO ON FOREIGN REGISTRANTS; HOWEVER, HE POINTED OUT THAT MANY GOVERNMENTS, INCLUDING THE U.S., PUBLISH DOCUMENTS CONTAINING REGISTRATIONS.

9. PARTS VI THROUGH VIII QUESTIONS 21-35: NING AGREED THAT QUESTIONS 21-35 COULD BE LIMITED TO INFRINGEMENTS ONLY WHICH OCCURRED IN REPUBLIC OF CHINA. HE ALSO AGREED THAT PROVISION OF INFORMATION REQUESTED IN QUESTIONS 21-35 BE VOLUNTARY, ALTHOUGH HE HOPED AMERICAN FIRMS WOULD CHOOSE TO COOPERATE.

10. PART X QUESTION 37: NING AGREED THAT AMERICAN FIRMS CONFIDENTIAL

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COULD PROVIDE THE ORIGINAL REGISTRATION CERTIFICATE OR OR A NOTARIZED TRUE COPY IN LIEU OF THE ORIGINAL.

11. RE PARA 10 REFTTEL: NING AGREED TO EXTEND THE JUNE 30 FILING DATE FOR ANY AMERICAN FIRM REQUESTING AN EXTENSION FOR CAUSE. HE WOULD NOT AGREE TO A BLANKET EXTENSION TO OCTOBER 15, HOWEVER. HE ARGUED THAT ROC HAS TAKEN EVERY FEASIBLE STEP TO PUBLICIZE CENSUS BOTH AT HOME AND ABROAD. WHILE HE AGREED NO SYSTEM COULD GUARANTEE THAT EVERY REGISTRANT WOULD BE INFORMED, A HIGH PERCENTAGE OF REGISTRANTS ALREADY HAVE RESPONDED. IN ANY CASE, NO REGISTRATION WILL BE CANCELLED ARBITRARILY OR CAPRICIOUSLY BECAUSE A RESPONDENT MAKES AN HONEST MISTAKE IN FILLING OUT THE QUESTIONNAIRE OR FOR GOOD CAUSE FAILS TO RETURN

THE QUESTIONNAIRE WITHIN THE PRESCRIBED TIME.

12. TO ENSURE THAT AGREEMENTS REACHED WITH NING
ARE BINDING, EMBASSY PROPOSES TO CONFIRM THEM IN
EXCHANGE OF LETTERS.

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